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No. 86-1283

In The

Supreme Court of the United States

October Term, 1986

ROBERT KAMEAN, RAY E. COFFIE and TERRELL WILLIAMS, Individually and on behalf of all other members of Local 363, International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America,

Petitioners,

vs.

LOCAL 363, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFERS, WAREHOUSEMEN AND HELPERS OF AMERICA, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

REPLY BRIEF FOR PETITIONERS

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ARGUMENT

This reply brief is submitted to correct the misstatements by respondents that petitioners have received "all of the benefits of their respective settlements" (p. 5 of Respondent's Brief), and that no case or controversy under Article III of the Constitution exists. (The points addressed in petitioners' initial submission will not be repeated.)

Petitioner Kamean is a party who retains a personal stake and interest in the underlying action sufficient to satisfy the case or controversy requirements of Article III of the Constitution permitting appellate review of the District Court's denial of class certification.

Mr. Kamean's individual action has not been finalized or mooted in the Article III sense, which may have resulted in a jurisdictional bar to the petitioners' appeal, as the stipulation of settlement did not resolve all of the issues before the court. *See, Deposit Guaranty National Bank of Jackson, Mississippi v. Roper,* 445 U.S. 326 (1980), reading:

> Although a case or controversy is mooted in the Article III sense upon payment and satisfaction of a final, unappealable judgment, a decision that is 'final' for purposes of appeal does not absolutely resolve a case or controversy until the time for appeal has run. Nor does a confession of judgment by defendants on less than all the issues moot an entire case; other issues in the case may be appealable.

Roper, 445 U.S. 326 at 333.

The stipulation of settlement made part of the record before

the District Court provided that the determination of the damages due Mr. Kamean would be submitted to binding arbitration and respondents would post a financial security bond in the amount of $20,000 to secure any award.

Respondents have not posted such bond nor has the arbitration proceeding commenced. Further, proceedings may be required before the District Court should respondents fail or refuse to post such bond or proceed to arbitration.

The District Court recognized that Mr. Kamean's individual action was not finalized or mooted in the Article III sense as it retained jurisdiction over the matter. In marking the case settled on June 2, 1986, the District Court stated:

> All right. The case is marked settled in accordance with the stipulation read into the record in open court. The Court reserves jurisdiction solely for the purpose of reopening the case merely to enforce the settlement and for no other purpose.

It is inconsistent that Mr. Kamean's action was mooted and the District Court reserved jurisdiction.

CONCLUSION

The stipulation of settlement of Mr. Kamean's individual action was not final and did not moot his private substantive claim as it did not resolve all of the issues before the court. Mr. Kamean (as well as the other petitioners for the reasons set forth in the petition) retains an individual stake and interest in the underlying action sufficient to satisfy the case or controversy requirement of Article III of the Constitution conferring jurisdiction on the court to review the adverse certification ruling.

Respectfully submitted,

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